IN THE HIGH COURT OF DELHI

RSA No.123/2002

Daya Chand & Ors. ..... Appellants
! through: Mr.Naresh Thanai, Adv.

VERSUS

$ Chunni Lal & Ors. ..... Respondents
^ through: Nemo.

% DATE OF DECISION: 13.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J. (Oral)**

1. Heard learned counsel for the appellants.

2. It is unfortunate that for over 5 years even a question of law has not been formulated in the above captioned appeal.

3. Being a second appeal, unless it is shown that a substantial question arises for consideration, the appeal has to be dismissed.

4. Since the matter has remained pending for 5 years, I find it appropriate to formally frame the question of law which

can always be framed in every litigation being whether on evidence on record the finding arrived at by the learned Courts below is legal and valid?

5. Surely, without appreciating evidence, issue of conclusion arrived at being right or wrong is a question of law and not a question of fact.

6. Briefly stated, appellants filed a suit for permanent injunction against the defendants alleging that the subject property of the suit was a private temple constructed by their ancestor Harphool Singh. They claim that they had been permitting residents of the locality to visit the temple but disclaimed a public dedication of the temple.

7. Defendants refuted the claim of the appellants and pleaded that the temple was dedicated to the public and the appellants had no right to interfere with their right to visit and worship at the temple.

8. On the pleadings of the parties following issues were framed:-

> "1. Whether the suit property is privately owned by the plaintiff?
>
> 2. Whether the suit property is a public or private temple? Onus on the parties.

3. Whether the plaintiff has concealed material fact from the Court and is not entitled to equity of injunction?

4. Whether the plaintiff has no cause of action to institute the present suit?

5. Whether the plaintiff No.3 was entrusted the job of Poojari in the temple as claimed by the defendant?

6. Whether the plaintiff is entitled to the relief prayed for in the suit?

7. Relief."

9. Holding that the evidence on record established that the temple was dedicated to the public the suit was dismissed vide judgment and decree dated 12.5.1994.

10. A first appeal was preferred against the judgment and decree passed by the learned Trial Judge which was registered as RCA No.625/2000. An application was filed by the appellants in the appeal under Order 41 Rule 27 of the Code of Civil Procedure praying that they may be given liberty to lead additional evidence. Additional evidence sought to be led pertained to the house tax assessment relating to the property. Presumably, appellants intended to establish that the house tax in respect of the property was being paid by them.

11. Vide order dated 5.1.2002 afore-noted application filed by the appellants was dismissed and by a judgment and

decree of even date i.e. 5.1.2002 the appeal was dismissed.

12. In respect of the order dated 5.1.2002 passed by the learned Appellate Judge dismissing application under Order 41 Rule 27 of the Code of Civil Procedure suffice would it be to state that under the Delhi Municipal Corporation act 1957 instance of property taxes falls on persons primarily liable to pay tax as per Section 120 thereof. He who pays the property tax is the person treated as primarily liable for payment of property tax. Said liability does not result in a title in favour of the person concerned.

13. It is trite that entries in municipal records do not create titles. The learned Appellate Judge has treated this to be the basis while rejecting application under Order 41 Rule 27 of the Code of Civil Procedure filed by the appellants. I concur.

14. On merits, relevant would it be to note that neither party brought on record the original title deed in respect of the land constituting the temple. The Courts below have referred to and relied upon entries in the revenue record pertaining to the land in question i.e. the land over which the temple was built. These documents are Ex.PW-3/F and Ex .PW-3/G. In the words of learned Trial Judge, the contents of the documents are noted as under:-

> "Both these documents are to the effect that the suit temple was in existence since 1957. It may also be pointed out that these documents also contain a recital to the effect that the people of the locality visit the temple to perform puja."

15. Learned Trial Judge has further taken note of the testimony of late Harphool Singh in a revenue proceedings where during cross-examination he had admitted that the land in question over which the temple was constructed was not purchased by him.

16. View which has been taken is that from the afore-noted documents and testimony of Harphool Singh in earlier revenue proceedings it appeared to be a case where Harphool Singh had effected construction on gaon sabha land.

17. In this connection relevant would it be to note that in his testimony PW-3 i.e. witness of the plaintiff proved documents effect whereof has been discussed by the learned Trial Judge in para 9 of the judgment. The discussion is as under

> "Ex.PW-3/C is the certified copy of the statement given by one Shri Randhir Singh before the Court of Revenue Assistant. By the above statement dated 12.7.73, Shri Randhir Singh had deposed that a temple was in existence in the suit property. Ex.PW-3/D is statement of one Shri Banwari. He had not only deposed that a temple was in existence in the suit property, but also that the said temple was 15 to 16 years old. The statement of the witness was recorded in the year 1973. It means that as per the testimony of the

> said witness the temple was in existence since at least 1958. Ex.PW-3/E is the statement dated 27.7.1993 of none other than late Shri Harphool Singh, the father of the plaintiff. He had deposed that about 16 to 17 years before making the said statement he constructed a temple in the suit property. Since then he had been residing in the temple and the people of the locality visit the temple for puja."

18. The issue of public dedication of a temple has to be considered with reference to the origin of the temple; the manner in which its affairs are managed; the nature and extent of the gifts received by it; the right exercised by the devotees worshiping therein and the consciousness of those who manage the temple and the devotees.

19. In view of the testimony of the witnesses of the plaintiffs and in particular PW-3 as also the documentary evidence being Ex.PW-3/C, PW-3/D, PW-3/F and PW-3/G and in particular testimony of Harphool Singh recorded by the Revenue Authorities on 27.7.1993 being Ex.PW-3/E, finding returned by the learned Trial Judge and as affirmed by the learned Appellate Judge is correct and is sustainable on the basis of the evidence which was led by the parties.

20. The appeal is accordingly dismissed.

21. No costs.

November 13, 2007 **PRADEEP NANDRAJOG, J.**
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